



U.S. Department of Justice

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June 5, 2020

By ECF

Honorable Rachel P. Kovner
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Chunn, et al. v. Warden Derek Edge,*
Civil Action No. 20-cv-1590 (Kovner, J.) (Mann, M.J.)

Dear Judge Kovner:

Respondent respectfully informs the Court of supplemental authority in further support of his motion to dismiss the Amended Petition and in opposition to the Petitioners' motion for preliminary injunction.

Last night, in *Williams v. Wilson*, --- S.Ct. ---, 2020 WL 2988458 (Mem) (U.S. June 4, 2020), the Supreme Court stayed the Northern District of Ohio's April 22 and May 19 orders regarding the transfer of inmates from a federal prison in Ohio due to COVID-19 "pending disposition of the Government's appeal in the United States Court of Appeals for the Sixth Circuit and further order of the undersigned or of the Court." A copy of this order is annexed hereto.

Also last night, in the putative class action matter *Nellson v. Barnhart*, No. 20-CV-756 (D. Colo. June 4, 2020), the district court denied plaintiff's motion for a temporary restraining order and a preliminary injunction in an action brought by plaintiff inmate who contends that his Eighth Amendment rights are being violated due to the alleged lack of protective measures to contain the spread of COVID-19 at his BOP facility. The district court held that "defendants' procedures demonstrate that defendants have reasonably responded to the risks of COVID-19 and have not disregarded a substantial risk to inmate health"; "[a]s a result, plaintiff has not made a strong showing on the likelihood of success on the merits." *Id.* at *14. A copy of this decision is annexed hereto and will be published shortly.

On Wednesday, in a similar putative class action case in the Middle District of Georgia, *A.S.M., et al. v. Warden, Stewart Cty. Det. Ctr.*, --- F. Supp. 3d ---, 2020 WL 2988307, at *11 (M.D. Ga. June 3, 2020), the court denied Petitioners' motion for preliminary injunction relief in its entirety. The district court held that "[p]etitioners have failed to demonstrate a substantial likelihood that they will be able to prove that they are being subjected to unconstitutional conditions of confinement that can only be remedied by their release from detention." *Id.* Further, the district court "does not have jurisdiction over their claims for immediate habeas corpus relief,

and they are not otherwise entitled to preliminary injunctive relief that requires their release from detention.” *Id.*

On Tuesday, in a similar putative class action case in Arizona styled *Lucero-Gonzalez v. Kline*, --- F. Supp. 3d --- , 2020 WL 2987002, *10 (D. Ariz. June 2, 2020) (Humetewa, J.), the district court denied plaintiffs’ motion for a preliminary injunction “[b]ecause neither of the two classes of Plaintiff (pre-trial and post-conviction) have met their burden for preliminary injunctive relief, the Court will deny the Motion.” A copy of this decision is annexed hereto.

Respondent thanks the Court for its consideration of this matter.

Respectfully submitted,

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Encl.

cc: The Honorable Roanne L. Mann (By ECF)
All Counsel of Record (By ECF)